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| 10/719,321 | 11/21/2003 | Dennis Osamu Hirotsu | AA551C | 3072 |

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| EXAMINER |
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CRAIG, PAULA L

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| ART UNIT | PAPER NUMBER |
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3761

| SHORTENED STATUTORY PERIOD OF RESPONSE | MAIL DATE | DELIVERY MODE |
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Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

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|------------------------------|--------------------------------------|--|--|
| Office Action Summary | Application No. 10/719,321 | Applicant(s) HIROTSU, DENNIS OSAMU | |
| | Examiner Paula L. Craig | Art Unit 3761 | |

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 November 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-7 and 10-12 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7 and 10-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08) Paper No(s)/Mail Date <u>2/5/07</u> . | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Response to Arguments

1. Applicant's arguments with respect to Claims 1-7 and 10-12 have been considered but are moot in view of the new grounds of rejection.

Claim Objections

2. Claim 11 is objected to because of the following informalities: In Claim 11, line 6, "absorbent articles" should be "sanitary napkins". Appropriate correction is required.

Claim Rejections - 35 USC § 103

3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
4. Claims 1-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent No. 5,897,542 to Lash et al. in view of U.S. Patent No. 6,318,555 to Kuske et al. and further in view of U.S. Patent No. 6,454,095 to Brisebois et al.
5. For Claim 1, Lash teaches a package for disposable absorbent products having an outer surface (Figs. 1-2, Abstract, col. 1, line 65 to col. 2, line 6). Lash teaches the package including a plurality of disposable absorbent articles contained in the package, the plurality of disposable absorbent articles including at least two different types of absorbent articles having different physical properties or structures (Figs. 1-2, col. 1, line 65 to col. 2, line 6, col. 4, lines 30-32, col. 8, line 59 to col. 10, line 17). Having the

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type of indication means disposed on the respective absorbent articles is considered by the Examiner to be inherent in Lash, as the invention disclosed by Lash would not function as described without some means of distinguishing the first and second article types. The burden to show that this, in fact, is not the case is shifted to Applicant as per *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). Note that a difference in size or thickness between the two types would be an indication means; Lash teaches the first and second article types differing in absorbent capacity, with the greater capacity articles being used overnight when greater capacity is required (Abstract, col. 1, line 65 to col. 2, line 6, col. 8, line 59 to col. 9, line 58). This would not be possible if the two types could not be distinguished by the user. Lash does not teach the package having a window, nor the absorbent articles being individually wrapped with the indications means of the being disposed on the wrapper of the absorbent articles. However, windows for absorbent article packages are well known in the art. Kuske confirms this and teaches a package for disposable absorbent products having a window (window is window 88, visual cue 96, and accessory window 98, which may be continuous with each other; Figs. 1-12, col. 5, line 22 to col. 7, line 67; note that all of the bag may be clear or the window may wrap around all four walls of the package so that most or all of the articles are visible, as described in col. 7, lines 40-67). Kuske teaches the window providing a product-remaining indicator so that a caregiver can easily determine the number of articles remaining in the package (col. 6, lines 61-67, col. 7, lines 64-67, Claim 12). Individual wrappers for absorbent articles are also well known in the art. Brisebois confirms this and teaches a package of absorbent articles in

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which the absorbent articles are individually wrapped and each wrapper includes an indication means of a physical property of the article (Figs. 1-11, col. 1, line 5 to col. 2, line 61, col. 3, lines 1-27, col. 5, line 28 to col. 7, line 63). Brisebois teaches that the indication means on the wrapper allows absorbent articles of different types to be easily distinguished when they are carried together (col. 2, lines 6-42). Brisebois teaches that an individual wrapper for each article allows the article to be carried in a purse or pocket while keeping the article free from dirt and impurities (col. 1, lines 26-42). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Lash to include the absorbent articles being individually wrapped, and the indication means of the absorbent articles being located on the wrapper, as taught by Brisebois, to keep the absorbent articles free from dirt and impurities and allow absorbent articles of different types to be easily distinguished, as taught by Brisebois. It also would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Lash to include the package having a window showing most or all of the absorbent articles in the package, as taught by Kuske, to allow the caregiver to easily determine the number of articles remaining in the package, as taught by Kuske.

6. For Claim 2, Lash teaches the at least two different types of absorbent articles being defined by the absorbent capacity of the absorbent articles, the kind of the absorbent articles, the dimension of the absorbent articles, or the combination thereof (col. 1, line 65 to col. 2, line 6, col. 8, line 59 to col. 9, line 59).

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7. For Claim 3, Lash does not teach a window. Kuske teaches the window having a size large enough so that at least 30% of the contained absorbent articles can be seen through the window (Figs. 1-12, col. 5, line 22 to col. 7, line 67; note that all of the bag may be clear or the window may wrap around all four walls of the package so that most or all of the articles are visible, as described in col. 7, lines 40-67). It would have been obvious to one of ordinary skill in the art to modify Lash to include the window having a size large enough so that at least 30% of the contained absorbent articles can be seen through the window, as taught by Kuske, for the same reasons as described above for Claim 1 in paragraph 5.

8. For Claim 4, Lash does not expressly teach the indication means including colors, lines, patterns, ornamental designs, pictures, symbols, script, or characters. Brisebois teaches the indication means including lines, patterns, ornamental designs, symbols and/or characters (Figs. 1-11, col. 3, lines 1-27). Brisebois teaches lines, patterns, ornamental designs, symbols and/or characters providing information about the physical characteristics or structure of the absorbent articles in a way that is visually noticeable, readily visible and understandable to the user (col. 3, lines 1-27, col. 6, lines 1-67). It would have been obvious to one of ordinary skill in the art to modify Lash to include the indication means including lines, patterns, ornamental designs, symbols and/or characters, as taught by Brisebois, to provide information about the article in a way that is visually noticeable, readily visible and understandable to the user, as taught by Brisebois.

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9. For Claim 5, Lash teaches the package having an opening device which has a size large enough so that the different types of absorbent articles can be picked up by the user through the opening device (opening device 225, Fig. 2 and col. 9, line 65 to col. 10, line 2).

10. For Claim 6, Lash teaches the package having a front panel, a rear panel opposed to the front panel, side panels which connect the front and rear panels, and a top panel which connects the front, rear, and side panels, and an opening device formed on the top panel (panels 210, 211, 212, 213, 214, and 220 and opening device 225, Fig. 2). Lash does not teach a window. Kuske teaches the window being formed on the front panel (Figs. 1-12, col. 5, line 22 to col. 7, line 67; note that all of the bag may be clear or the window may wrap around all four walls of the package so that most or all of the articles are visible, as described in col. 7, lines 40-67). It would have been obvious to one of ordinary skill in the art to modify Lash to include the window being formed on the front panel, as taught by Kuske, for the same reasons as described above for Claim 1 in paragraph 5.

11. For Claim 7, Lash does not teach a window. Kuske teaches the window being formed by differentiating the translucency or the transparency at the window from the area surrounding the window (Figs. 3, 8-9, and 11, col. 5, line 21 to col. 7, line 67).

Kuske teaches that this allows the windows to have an aesthetically pleasing shape, allow the buyer to perceive the contents of the package, allows determination of the size of the article being purchased, provides a product-remaining indicator, and also permits illustrations, instructions, manufacturer information, and the like to be printed on the

package (col. 5, line 21 to col. 7, line 67). It would have been obvious to one of ordinary skill in the art to modify Lash to include the window being formed by differentiating the translucency or the transparency at the window from the area surrounding the window, as taught by Kuske, to allow the window to have an aesthetically pleasing shape, allow the buyer to perceive the contents of the package, allow determination of the size of the article being purchased, provide a product-remaining indicator, and also permit illustrations, instructions, manufacturer information, and the like to be printed on the package, as taught by Kuske.

12. Claims 1-4, 7, and 10 are rejected under 35 U.S.C. 103(a) as being unpatentable over Business Wire "Playtex Products announce tampon initiatives" (hereinafter Playtex) in view of Kuske and further in view of Brisebois.

13. For Claim 1, Playtex teaches a package for disposable absorbent products having an outer surface (lines 1-12). Playtex teaches the package including a plurality of disposable absorbent articles contained in the package, the plurality of disposable absorbent articles including at least two different types of absorbent articles having different physical properties or structures (lines 1-14). Having the type of indication means disposed on the respective absorbent articles is considered by the Examiner to be inherent in Playtex, as the invention disclosed by Playtex would not function as described without some means of distinguishing the first and second article types. The burden to show that this, in fact, is not the case is shifted to Applicant as per *In re Fitzgerald*, 619 F.2d 67, 70, 205 USPQ 594, 596 (CCPA 1980). Note that a difference

in size or thickness between the two types would be an indication means; Playtex teaches the first and second article types differing in absorbent capacity, so that a woman will have the correct tampon to meet her needs (lines 9-14). This would not be possible if the two types could not be distinguished by the user. Playtex does not teach the package having a window, nor the absorbent articles being individually wrapped with the indications means of the being disposed on the wrapper of the absorbent articles. However, windows for absorbent article packages are well known in the art. Kuske teaches a package for disposable absorbent products having a window (window is window 88, visual cue 96, and accessory window 98, which may be continuous with each other; Figs. 1-12, col. 5, line 22 to col. 7, line 67; note that all of the bag may be clear or the window may wrap around all four walls of the package so that most or all of the articles are visible, as described in col. 7, lines 40-67). Kuske teaches the window providing a product-remaining indicator so that a user can easily determine the number of articles remaining in the package (col. 6, lines 61-67, col. 7, lines 64-67, Claim 12). Individual wrappers for absorbent articles are also well known in the art. Brisebois confirms this and teaches a package of absorbent articles in which the absorbent articles are individually wrapped and each wrapper includes an indication means of a physical property of the article (Figs. 1-11, col. 1, line 5 to col. 2, line 61, col. 3, lines 1-27, col. 5, line 28 to col. 7, line 63). Brisebois teaches that the indication means on the wrapper allows absorbent articles of different types to be easily distinguished when they are carried together (col. 2, lines 6-42). Brisebois teaches that an individual wrapper for each article allows the article to be carried in a purse or pocket while keeping the article

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free from dirt and impurities (col. 1, lines 26-42). It would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Playtex to include the absorbent articles being individually wrapped, and the indication means of the absorbent articles being located on the wrapper, as taught by Brisebois, to keep the absorbent articles free from dirt and impurities and allow absorbent articles of different types to be easily distinguished, as taught by Brisebois. It also would have been obvious to one of ordinary skill in the art at the time of the invention by the Applicant to modify Playtex to include the package having a window showing most or all of the absorbent articles in the package, as taught by Kuske, to allow the user to easily determine the number of articles remaining in the package, as taught by Kuske.

14. For Claim 2, Playtex teaches the at least two different types of absorbent articles being defined by the absorbent capacity of the absorbent articles, the kind of the absorbent articles, the dimension of the absorbent articles, or the combination thereof (lines 1-14).

15. For Claim 3, Playtex does not teach a window. Kuske teaches the window having a size large enough so that at least 30% of the contained absorbent articles can be seen through the window (Figs. 1-12, col. 5, line 22 to col. 7, line 67; note that all of the bag may be clear or the window may wrap around all four walls of the package so that most or all of the articles are visible, as described in col. 7, lines 40-67). It would have been obvious to one of ordinary skill in the art to modify Playtex to include the window having a size large enough so that at least 30% of the contained absorbent

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articles can be seen through the window, as taught by Kuske, for the same reasons as described above for Claim 1 in paragraph 13.

16. For Claim 4, Playtex does not expressly teach the indication means including colors, lines, patterns, ornamental designs, pictures, symbols, script, or characters. Brisebois teaches the indication means including lines, patterns, ornamental designs, symbols and/or characters (Figs. 1-11, col. 3, lines 1-27). Brisebois teaches lines, patterns, ornamental designs, symbols and/or characters providing information about the physical characteristics or structure of the absorbent articles in a way that is visually noticeable, readily visible and understandable to the user (col. 3, lines 1-27, col. 6, lines 1-67). It would have been obvious to one of ordinary skill in the art to modify Playtex to include the indication means including lines, patterns, ornamental designs, symbols and/or characters, as taught by Brisebois, to provide information about the article in a way that is visually noticeable, readily visible and understandable to the user, as taught by Brisebois.

17. For Claim 7, Playtex does not teach a window. Kuske teaches the window being formed by differentiating the translucency or the transparency at the window from the area surrounding the window (Figs. 3, 8-9, and 11, col. 5, line 21 to col. 7, line 67). Kuske teaches that this allows the windows to have an aesthetically pleasing shape, allow the buyer to perceive the contents of the package, allows determination of the size of the article being purchased, provides a product-remaining indicator, and also permits illustrations, instructions, manufacturer information, and the like to be printed on the package (col. 5, line 21 to col. 7, line 67). It would have been obvious to one or ordinary

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skill in the art to modify Playtex to include the window being formed by differentiating the translucency or the transparency at the window from the area surrounding the window, as taught by Kuske, to allow the window to have an aesthetically pleasing shape, allow the buyer to perceive the contents of the package, allow determination of the size of the article being purchased, provide a product-remaining indicator, and also permit illustrations, instructions, manufacturer information, and the like to be printed on the package, as taught by Kuske.

18. For Claim 10, Playtex teaches the disposable absorbent articles being feminine hygiene articles (lines 1-13).

19. Claims 11-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kuske in view of Lash and further in view of Brisebois.

20. For Claims 11 and 12, Kuske teaches a package for sanitary napkins, the package including a plurality of sanitary napkins and at least one window, with the sanitary napkins being seen through the window (window is window 88, visual cue 96, and accessory window 98, which may be continuous with each other; Figs. 1-12, col. 2, lines 40-48, col. 5, line 21 to col. 7, line 67). Kuske does not teach the package including at least two types of sanitary napkins, nor the sanitary napkins being wrapped or individually wrapped with the types of sanitary napkins being identified by a common indication means disposed on the respective wrappers. Lash teaches a package for absorbent articles, with the absorbent articles being articles which absorb and contain body exudates, and are placed against the body of the wearer to absorb and contain the

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exudates (Figs. 1-2, Abstract, col. 1, line 65 to col. 2, line 46). Lash teaches at least two different types of absorbent articles having different physical properties or structures, with each type of article being identified by an indication means, as described above for Claim 1 in paragraph 5. Lash teaches that this provides convenience (col. 9, lines 47-49). Given that Lash teaches the absorbent articles being articles which absorb and contain body exudates and are placed against the body of the wearer to absorb and contain the exudates, and sanitary napkins are absorbent articles which absorb and contain body exudates and are placed against the body of the wearer to absorb and contain the exudates, it would have been obvious to modify Kuske for the package to include at least two types of absorbent articles, as taught by Lash, to provide convenience, as taught by Lash. Brisebois teaches wrapping of sanitary napkins identified by a common indication means disposed on the respective wrappers (col. 5, line 14 to col. 6, line 61). It would also have been obvious to modify Kuske for the sanitary napkins to be wrapped or individually wrapped, and to be identified by a common indication means disposed on the respective wrappers, as taught by Brisebois, for the same reasons as described above for Claim 1 in paragraph 5.

Double Patenting

21. Claims 1-2, 4, 10, 11, and 12 are rejected on the ground of nonstatutory obviousness-type double patenting as being unpatentable over claims 3 and 5 of Molina (6,601,705) in view of Lash. Although the conflicting claims are not identical, they are not patentably distinct from each other because they differ in that Molina does not

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require more than one type of absorbent article in the package. Lash teaches having more than one type of absorbent article in the package (Abstract). Lash teaches that this provides convenience (col. 9, lines 47-49). It would have been obvious to one of ordinary skill in the art to modify the package of Molina to include placing more than one type of absorbent article in the package, as taught by Lash, to provide convenience, as taught by Lash.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Paula L. Craig whose telephone number is (571) 272-5964. The examiner can normally be reached on 8:30AM-4:00PM M-F.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Tanya Zalukaeva can be reached on (571) 272-1115. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Paula L Craig
Examiner
Art Unit 3761

PLC

TATYANA ZALUKAEVA
SUPERVISORY PRIMARY EXAMINER

